

CHRISTOPHER CASTELINO,

Appellant

v.

MONTGOMERY COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 01-38

OPINION

This is an appeal of the denial of Appellants' request to transfer their daughter from her assigned school, Glenallen Elementary, to Westover Elementary School in Montgomery County. The local board has submitted a motion for summary affirmance maintaining that its decision is not arbitrary, unreasonable, or illegal. Appellants have submitted a reply opposing the local board's motion.

FACTUAL BACKGROUND

When the transfer request was first submitted, Sara was attending third grade in a private school. Her parents wanted to enroll her in the public school system for fourth grade. On March 30, 2001, Appellants requested that Sara be permitted to attend Westover Elementary School for the 2001-2002 school year rather than her home school, Glenallen Elementary. The transfer request explained as follows:

We live within walking distance (down the street) of Westover. My eleventh grade son will be able to walk over and pick Sara up after school each day. He will then watch her and supervise her until we get home. Neither Kyle nor Sara will need to cross any main intersections and we believe this will be the safest way for them to get home. My husband travels frequently and I get home at 4:00 p.m. (Emphasis in original.)

Appellants' request was denied by the field office supervisor on April 17, 2001.

Thereafter, Appellants appealed to the deputy superintendent of schools, Dr. James Williams. Their appeal explained that due to Appellants' busy work schedules, their son Kyle picks Sara up from daycare after school.¹ Because Kyle does not have access to a car, he would have to walk back and forth from Glenallen, which is over a mile and a half from their home,

¹Sara's father frequently travels overseas for days at a time and her mother works one job during the day and another job some afternoons and evenings during the week.

crossing a busy road, to pick up his sister. Appellants believe that Westover, which is a quarter of a mile from their home on the same side of the street, provides a much safer and shorter route for their children. Appellants also expressed concern about their children walking the route in inclement weather.

The deputy superintendent assigned the case to a hearing officer, Ms. Elaine Lessenco, who conducted a review of the matter and submitted a memorandum recommending that the denial of the transfer be affirmed because of the absence of a hardship. On the basis of this recommendation, the superintendent's designee affirmed the denial of the transfer request on May 25, 2001.

Appellants appealed the denial to the local board, noting that Kyle would be picking Sara up from Kids after Hours at a time when safety patrols were not stationed on the street. They further emphasized their concern regarding safety, stating: "We do not believe that walking to and from Glenallen is in the best interests of our children. Our primary concern is for their safety and well being. Additionally, their time and energy will be necessary for homework/studying." By memorandum dated June 26, 2001, the superintendent responded, in part:

The attendance boundaries have been drawn assigning some families whose homes are closer to Westover Elementary School to attend Glenallen Elementary School. There are day care facilities available in both locations. Although it would be more convenient for the family to have Sara at Westover Elementary School, the situation does not meet the criteria for hardship that would overcome the restrictions against transfer. Sara and her brother are at an age at which they should be mature enough to cross busy streets safely on the occasions when neither parent is available to transport Sara.

The superintendent noted that out of 23 requests for transfer from Glenallen, 5 had been approved, one on the basis of having a sibling in the requested school, two to attend a language immersion program, one on the basis of a documented hardship, and one to complete the feeder sequence. Further, out of 18 requests for transfer to Westover, 4 had been approved, one to complete the sequence, one who had a sibling already at the school, and two for documented hardships. He further noted that projected utilization at Glenallen is 105.5 percent and Westover at 79.4 percent.

In a decision issued July 26, 2001, the local board unanimously affirmed² the denial of the transfer request stating, in pertinent part:

²One board member and the student board member did not participate in consideration of the appeal.

To be expected, Sara's parents would like her to attend the school closest to their home and to facilitate her brother walking a shorter distance to pick her up after school. However, as with most school attendance zones, some students live closer to one school but are assigned to another school. There is no denying that Sara's brother would have to walk a great distance of a long duration, exacerbated if there was inclement weather, were he, at his parents' behest, to traverse Randolph Road to pick up Sara and, then, walk back with her. It is for the very reason that the distance is great that Sara is entitled to, and the school system is prepared to provide, bus transportation that would obviate the need for Sara's brother to cross a heavily-trafficked road to walk home from Glenallen with Sara. The resulting need to care for Sara in the short interval between the time she is dropped off by her bus and the time that her brother arrives home from his school is similar to what the parents of most elementary school parents (most of whom similarly work outside the house) face. This does not amount to a hardship that warrants a transfer.

Local Board Decision at 1-2.

ANALYSIS

The standard of review that the State Board applies in reviewing a student transfer decision is that the State Board will not substitute its judgment for that of the local board unless the decision is shown to be arbitrary, unreasonable or illegal. *See, e.g., Breads v. Board of Education of Montgomery County*, 7 Op. MSBE 507 (1997). The State Board has noted that student transfer decisions require balancing county-wide considerations with those of the student and family. *See, e.g., Marbach v. Board of Education of Montgomery County*, 6 MSBE 351, 356 (1992). Socio-economic level, building utilization, enrollment levels, and the educational program needs of the individual student are all legally permissible and proper subjects of consideration in weighing the impact of a request for a student to transfer from his or her home school to some other school of choice. *Slater v. Board of Education of Montgomery County*, 6 Op. MSBE 365, 371-72 (1992).

Montgomery County Public Schools ("MCPS") Regulation JEE-RA - Transfer of Students lists three criteria for consideration of a student transfer: (1) an older sibling attending the requested school at the same time; (2) continuation of a feeder pattern when the student is ready to move to the next education level, such as elementary to middle school or middle school to high school; or (3) a documented hardship. The only applicable consideration for a transfer in this case is a documented hardship.

Appellants request their daughter's transfer primarily based on concerns related to child

care arrangements. Because Sara's brother is responsible for picking her up after school and must walk from home to Sara's school and back, Appellants would prefer a shorter and safer walking route.³

Under MCPS policy, Appellants' predicament is not viewed as a hardship. The MCPS School Transfer Information Booklet explains that "[p]roblems that are common to large numbers of families, such as issues involving provision of day care, do not constitute a hardship, absent additional compelling factors." Booklet at 2. Indeed, on numerous occasions, the State Board has upheld the local determination that day care related problems do not suffice to justify a transfer.⁴ See *Charles and Michelle Sullivan v. Board of Education of Montgomery County*, MSBE Opinion No. 00-22 (April 19, 2000); *Alberto Gutierrez and Theresa Finn v. Board of Education of Montgomery County*, MSBE Opinion No. 00-1 (February 1, 2000); *Gelber v. Board of Education of Montgomery County*, 7 Op. MSBE 616 (1997); *Breads v. Montgomery County Board of Education*, 7 Op. MSBE 507 (1997); *Marbach v. Montgomery County Board of Education*, 6 Op. MSBE 351 (1992).

The Court of Appeals has ruled that there is no right to attend a particular school. See *Bernstein v. Board of Education of Prince Georges County*, 245 Md. 464, 472 (1967); cf. *Dennis v. Board of Education of Montgomery County*, 7 Op. MSBE 953 (1998) (desire to participate in particular courses does not constitute unique hardship sufficient to override utilization concerns); *Marshall v. Board of Education of Howard County*, 7 Op. MSBE 596 (1997) (no entitlement to attend four-year communications program offered at Mount Hebron); *Slater v. Board of Education of Montgomery County*, 6 Op. MSBE 365 (1992) (denial of transfer to school alleged to better serve student's abilities and welfare); *Williams v. Board of Education of Montgomery County*, 5 Op. MSBE 507 (1990) (denial of transfer to program offering advanced German); *Sklar v. Board of Education of Montgomery County*, 5 Op. MSBE 443 (1989) (denial of request to attend school offering four years of Latin, note taking/study skills course, and piano).

CONCLUSION

Based on our review of the record in this matter, we do not find that the local board's decision was arbitrary, unreasonable or illegal. Accordingly, we affirm the decision of the Board of Education of Montgomery County.

Raymond V. Bartlett

³Appellant's brother is a junior in high school. His school dismisses at 2:15 p.m., but the Appellants assert that he does not get home until 5:30 p.m. Because Glenallen is not in the walking zone of Appellant's home, Sara is entitled to bus transportation.

⁴The fact that Westover is closer to Appellants' home than Glenallen also fails to justify a transfer in this circumstance. Attendance zone boundaries do not always place students at the schools that are closest to their homes.

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December 5, 2001